



FOR CLERK USE ONLY

City Council

Item No. 9CITY COUNCIL AGENDA
FACT SHEET

Community Development

Department

Jun 15, 2010

Requested Date

1. Request:

Council Approval ☒Other (specify) ☐Information Only/
Presentation ☐Hearing ☐

2. Requested Action:

Adopt ordinance extending a moratorium on medical marijuana dispensaries, provide direction to staff.

3. Fiscal Impact:

Revenue:

Increase ☐Decrease ☐

Cost:

Increase ☐Decrease ☐Does Not Apply ☒Source: Amount: Source: Amount:

\$Unknown at this time.

4. Reviewed By:

Finance Dept. on By: Comments: City Attorney on By: Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE: Action ☐Consent ☐Hearing ☐Filing ☐Presentation ☐Other(specify) ☐Reviewed by: City Clerk Date City Manager Date

CITY COUNCIL AGENDA REPORT

SUBJECT: AN ORDINANCE EXTENDING A
MORATORIUM ON MEDICAL MARIJUANA
DISPENSARIES

AGENDA DATE: June 15, 2010

PREPARED BY: Armando G. Villa, Assistant City Manager



APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Consider report. Adopt ordinance by title only, waive full reading of ordinance. Provide direction to staff related to the police power policy considerations of the Council about whether or not the Council wishes to permanently ban medical marijuana dispensaries or consider some type of regulations to allow them in the appropriate zone.

FISCAL IMPACT: None.

BACKGROUND INFORMATION: (Prior action/information):

At its May 18, 2010 meeting, the Council adopted an initial 45-day moratorium on medical marijuana dispensaries in order to study whether these businesses should be permitted or banned within the City, and if allowed, how to regulate them. The 45-day moratorium is set to expire on or about July 2, 2010.

Per Government Code section 65858(d), in order to extend the moratorium, the Council must issue a report detailing what steps have been taken toward designing relevant legislation. This report discusses those steps.

DISCUSSION (Current consideration):

Since this Council approved the initial moratorium, the City Attorney has studied the issues surrounding medical marijuana dispensaries. This includes reviewing judicial opinions, monitoring pending medical marijuana litigation involving other cities, reviewing the marijuana legalization initiative which will appear on the November election ballot, and reviewing other cities' ordinances.

With increasing frequency, courts are issuing opinions clarifying what cities can and cannot do when regulating medical marijuana dispensaries. One eagerly anticipated case involving the City of Anaheim is likely to come out in the next two months. That decision will address whether cities can ban all dispensaries within city limits. The City

Attorney has been monitoring several other cases as well where cities are in litigation with medical marijuana dispensaries.

The City Attorney has also reviewed the initiative to legalize marijuana for medical and non-medical purposes. If the initiative were to pass, the City would be allowed to decide whether to license businesses where marijuana could be sold or consumed and to tax marijuana sales. If the initiative passes, it may be in the City's interest to consolidate its medical marijuana regulations with whatever rules it decides to implement under the new initiative.

In addition to the legal issues, there are policy concerns that the City is monitoring. Most cities that have allowed dispensaries have complained about the amount and frequency of complaints. These involve loitering of minors near and around sites and potential sales to minors (illegal sales). Typically, these types of businesses place a burden on Code Enforcement and Police Department activities. Consequently, monitoring of dispensaries for permit compliance can potentially place a substantial burden on the city's already depleted human resources. Additionally, there are secondary impacts such as potential new businesses not wanting to locate near dispensaries. In other words, the city could drive potential new businesses away.

The attached Ordinance would extend the moratorium for an additional 10 months and 15 days to allow further study of the City's options. This extension will allow the City to see the outcome of the Anaheim case as well as the marijuana legalization initiative. The extension would require a four-fifths vote of the Council for passage. If the extension does not pass, it would be unclear under Calexico's current zoning code whether or not dispensaries could go into business within City limits.

This Ordinance is an urgency ordinance. It requires at least a 4/5 vote in order to pass. Staff recommends approval of this Ordinance so that it is clear that dispensaries are banned within the City until such time the City can adequately analyze this issue and determine the best approach for the unique characteristics of the City. If Council chooses to adopt this Ordinance, staff also requests that Council provide some policy direction about this issue.

Attachments: Ordinance

ORDINANCE NO. 2010-_____

**AN INTERIM ORDINANCE EXTENDING AN URGENCY
MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR
OTHER FORMS OF MARIJUANA DISPENSARIES FOR AN
ADDITIONAL 10 MONTHS AND 15 DAYS**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities; and

WHEREAS, there is no state regulation or standard on the cultivation and/or distribution of medical marijuana and each local jurisdiction may establish local guidelines in accord with unique local concerns; and

WHEREAS, several California cities wherein medical marijuana dispensaries have been established have experienced an increase in crime, such as burglary, robbery, loitering around the dispensaries, an increase in pedestrian and vehicular traffic and noise in the vicinity of the dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, in October 2005, the State Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit, thus enabling the state to collect sales tax on medical marijuana sales; and

WHEREAS, in 2005, five California cities (Rocklin, Roseville, Oakland, Hayward and Fairfax) were polled by the City of Concord regarding secondary effects of medical marijuana dispensaries in the cities, and such secondary effects included street dealers attempting to sell to patrons entering the dispensaries; smoking marijuana in public areas; driving while under the influence of marijuana; attempted burglaries of marijuana establishments; robberies of clients patronizing establishments; adverse impacts on neighboring businesses; physicians writing prescriptions for any patron regardless of medical infirmity; nuisance behavior of patrons; and illegal drug sales from dispensaries. The City of Davis prepared a report of secondary impacts which included similar experiences; and

WHEREAS, in February 2006, a clinic in Tustin was shut down by the police after an undercover officer was able to buy marijuana without a prescription, and in July

2006, several dispensaries were raided in San Diego and San Marcos for selling marijuana to persons without a prescription; and

WHEREAS, in July 2007, narcotics agents shut down Natures Medicinal, Inc., a medical marijuana dispensary in the city of Bakersfield and an employee of that clinic pleaded guilty in 2008 to conspiring to distribute and possess with intent to distribute approximately 188 pounds of marijuana; and

WHEREAS, in May 2008 a CHP officer was critically injured and another motorist killed in Ventura after an individual drifted onto the shoulder and struck the officer during a traffic stop. The driver was charged with driving while intoxicated, and an investigation into the incident found that he had a large amount of marijuana in the vehicle that he had purchased from a dispensary in Compton; and

WHEREAS, in March 2009, the U.S. Attorney General state that federal law enforcement officials would ease enforcement at California medical marijuana establishments; and

WHEREAS, the City of Calexico has not adopted rules and regulations specifically applicable to the establishment and operation of dispensaries and the inability of the City to regulate these establishment in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments; and

WHEREAS, based on the adverse secondary impacts experienced by other cities and the lack of any regulatory program in the City of Calexico regarding the establishment and operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in Calexico as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and

WHEREAS, a medical marijuana dispensary currently is not expressly permitted or permitted subject to a conditional use permit in any zoning district in the City. The City Council, as of the date of this meeting, has yet to make a determination as to whether marijuana dispensaries are a permitted use in any zone within the City. However, such establishments may seek to locate in a zoning district as a permitted use, or may seek to legalize this use; and

WHEREAS, the establishment of a medical marijuana dispensary in the City will result in a direct and immediate threat to the public health, safety and welfare because the City does not currently regulate the location and operation of medical marijuana

dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical marijuana dispensaries in the City; and

WHEREAS, the City Council for the City of Calexico, per Government Code section 65858, enacted a moratorium on the establishment of medical marijuana dispensaries on May 18, 2010; and

WHEREAS, since the passage of the original moratorium, the City has been investigating the complex legal issues surrounding medical marijuana, as documented in the staff report accompanying this ordinance; and

WHEREAS, the City Council finds that the initial 45-day moratorium was an insufficient period to evaluate whether and how to regulate medical marijuana dispensaries; and

WHEREAS, the City Council for the City of Calexico finds that additional time is necessary to review the City's regulatory options.

NOW, THEREFORE, the City Council of the City of Calexico does hereby ordain as follows:

SECTION 1. Findings and Determination. The City Council ("Council") of the City of Calexico ("City") does hereby find and determine that:

- (a) The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve and protect the public health, safety and general welfare of its citizens; and
- (b) There is concern over the proliferation of medical marijuana dispensaries throughout California, the seemingly unregulated status of these dispensaries, the allegations (often upheld in court) that many dispensaries are distributing marijuana for non-medical purposes, the prevalence of burglaries at medical marijuana dispensaries and the associated burden on local law enforcement, and the secondary effects associated with controlled substance distributions run by unlicensed personnel; and
- (c) There is concern that the City's existing land use and zoning regulations do not explain with sufficient clarity how they control the location and operation of medical marijuana dispensaries and as a consequence do not adequately protect the health, safety, and general welfare of the citizens of

Calexico from the actual and potential impacts arising from those retail establishments; and

- (d) There is concern that these types of medical marijuana dispensaries are operating without paying their fair share of the expenses that they would impose on the City; and
- (e) The Council wishes to study the potential options and effects of restricting the operation of medical marijuana dispensaries, considering all available options ranging from banning such dispensaries to determining appropriate location and operating requirements to considering how such businesses could pay the revenue necessary to address unintended or secondary consequences of their operation within the city limits; and
- (f) The Council has determined that there is a current and immediate threat to the public health, safety, or general welfare of the City's citizens in allowing essentially unregulated medical marijuana dispensaries to obtain licenses and operate within the City and that granting permits to such dispensaries would result in a threat to public safety, health, and general welfare during the term of the study of additional regulations of medical marijuana dispensaries; and
- (g) The 45-day initial moratorium procedure authorized by Government Code section 65858 will allow for the necessary study of the effects of regulating medical marijuana dispensaries on the City and of proposed regulatory measures, and therefore imposing a moratorium in order to provide time for study and review of the issues is required. The City Council needs time to consider potential options for regulating medical marijuana dispensaries either by the Council or by voters and consideration of some of the elements by the California Coastal Commission including potential referrals back to the City Council for further study and analysis.
- (h) The current 45-day study period is inadequate to allow for the necessary study of the effects of medical marijuana dispensaries on the commercial areas of the City and of proposed regulatory measures, and therefore an extension of the moratorium in order to provide additional time for study and review of the issues is required.

SECTION 2. Emergency Measures.

- (a) No business licenses, use permits, or zoning approvals for any Medical Marijuana Dispensary within the City shall be approved, authorized, or granted, until such time as the City Council of the City of Calexico has conducted an appropriate study of the effect of Medical Marijuana Dispensaries on the character of the City and the effect they may have on factors possibly including property values, density and effective utilization of property in Calexico, the health, safety, and welfare of the community, and the legality and wisdom of various regulatory approaches toward Medical Marijuana Dispensaries, which study is intended to occur within a reasonable time.
 - (1) "Medical Marijuana Dispensary" means any person, business, organization, or land use involving or at any time engaged in the distribution of marijuana or related products, whether for medical purposes or otherwise.
- (b) Applications that have been submitted to the City but are not deemed complete, as of May 18, 2010, shall be subject to this Interim Ordinance.

SECTION 3. Severability. The City Council of the City of Calexico hereby declares that should any section, paragraph, sentence, phrase, term, or word of this Interim Ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Interim Ordinance irrespective of any such portion declared invalid.

SECTION 4. Effective Date; Expiration; Extension. Pursuant to California Government Code Section 65858, this interim ordinance is an urgency measure of the City Council of the City of Calexico and shall take effect immediately upon passage. This Interim Ordinance shall remain in force and effect for a period of ten (10) months and fifteen (15) days from the date of the expiration of the time period established in Ordinance No. 2010-_____, adopted on May 18, 2010 and shall, thereafter, expire unless and until the City Council has extended this Interim Ordinance by a four-fifths (4/5) vote of the City Council prior to its expiration, all in accordance with Section 65858. The immediate effective date of this Interim Ordinance is necessary to preserve and protect the public health, safety, or welfare of the residents of the City of Calexico.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico at the regular meeting this 15th day of June, 2010.

CITY OF CALEXICO CITY COUNCIL

David Ouzan, Mayor

Lourdes Cordova,
City Clerk

APPROVED AS TO FORM:

Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA)
CITY OF CALEXICO) SS.
COUNTY OF IMPERIAL)

I, Lourdes Cordova, City Clerk of the City of Calexico, and ex-officio Clerk of the City Council do hereby certify under the penalty of perjury, that the foregoing urgency Ordinance No. 2010-_____, was adopted by the City Council at a meeting of said City Council held on the 15th day of June, 2010, and that it was so adopted by the following vote:

ROLL CALL; AYES:
 NOES:
 ABSENT:
 ABSTAIN:

Lourdes Cordova

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify the foregoing to be an exact copy of Ordinance No. 2010-____ AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS.

CITY CLERK, Lourdes Cordova

DATE



STEVE COOLEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

April 19, 2010

RE: INITIATIVE MEASURE 09-0024

Dear Recipient:

I fully intend to inform the public of the dangers of this incredibly poorly written initiative.

I look forward to joining with many others in the fight against this initiative. I have every hope that the Attorney General will disallow the initiative's title and prepare an accurate summary. We need to work hard to defeat this fraud against the public.

Very truly yours,

A handwritten signature in black ink that reads "Steve Cooley". The signature is written in a cursive style with a large, looping "C" at the end.

STEVE COOLEY
District Attorney

Attachment

SS



STEVE COOLEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

April 13, 2010

Honorable Edmund G. Brown, Jr.
Attorney General of the State of California
1300 I Street
Sacramento, California 95814

Dear Honorable Brown:

**The Title and Summary of Initiative Measure 09-0024
Are Misleading and Will Confuse Voters**

Initiative Measure 09-0024, "The Regulate, Control and Tax Cannabis Act of 2010" (hereafter "the Act"), impermissibly and unfairly misleads the public into believing that the Act accomplishes what its title denotes, namely, that it regulates, controls, and taxes cannabis. Quite to the contrary, the Act provides no framework for accomplishing these feats, but instead, delegates unfettered regulatory and enforcement responsibilities to local city and county governments. In addition to the Act's failure to build a statewide regulatory system, it is internally inconsistent; contains provisions that will limit the rights of property owners and employers; bars the State of California from taxing cannabis; and will conflict with the Federal Drug-Free Workplace Act of 1988 (hereafter "DFWA"), thereby precluding businesses from receiving billions of dollars in federal funding.

Further, the summary suggests that state and local governments will reap major tax and other fiscal benefits. This is simply not the case. The title of Initiative Measure 09-0024 inaccurately and deceptively masks the initiative's real effects. I ask that you reject the proposed Title and Summary.

"The Regulate, Control and Tax Cannabis Act of 2010" allows local governments to "adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize . . . cultivation, processing, distribution, . . . transportation, sale and possession for sale of cannabis and delegate regulatory responsibilities to local governments (§ 11301).

While local governments may impose taxes and fees on cannabis-related activities, the state government would be precluded from imposing any cannabis specific tax or fee (§ 11302).

Honorable Edmund G. Brown, Jr.
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A. The Act does not Control Cannabis

In relevant part, the Act's nonbinding preamble provides that the Act is intended to accomplish the following:

Reform California's cannabis law in a way that will benefit the state[;]
Regulate cannabis like [California law regulates] alcohol[;] Implement a
legal regulatory framework to give California more control over
cultivation, processing, transportation, distribution, and sale of cannabis[;]
. . . Ensure that if a city decides it does want to tax and regulate the buying
and selling of cannabis . . . that a strictly controlled legal system is
implemented to oversee and regulate cultivation, distribution, and sales . . .
.[;] Tax and regulate cannabis to generate billions of dollars for our state
and local governments . . . [;] [and to] [a]llow the Legislature to adopt a
statewide regulatory system for a commercial cannabis industry. (The Act,
Section 2(B).)

The Act itself is completely at odds with the idea that it provides regulatory framework giving "California more control over [the] cultivation, processing, transportation, distribution, and sale of cannabis," (The Act, section 2(B)(3).) The Act creates no regulatory framework whatsoever as such responsibilities are delegated to the state's 478 cities and 58 counties. This local government "figure it out" approach creates confusion and misunderstanding, and actually limits state control over marijuana-related activities.

Moreover, this approach in no way "regulate[s] cannabis like alcohol." Alcohol is controlled by the extensive legal framework set forth in article XX, section 22 of the California Constitution and the Alcohol Beverage and Control Act (Bus. & Prof. Code, § 2300, et seq.). Under this framework, the state has "the exclusive right and power to license and regulate . . . alcoholic beverages within the State." (Cal. Const., Art XX, § 22.) Furthermore, it establishes the Department of Alcoholic Beverage Control (hereafter ABC) which is responsible for investigating and enforcing the provisions of the Alcohol Beverage and Control Act.

Thus, the Act's deference to local authorities regarding marijuana regulation is nothing like how alcohol is controlled in California. Furthermore, forcing local governments to promulgate comprehensive cannabis-related regulations will not only unduly burden local governments, but is also certain to lead to a chaotic and confusing result.

B. The Act Deregulates and Eliminates Government Control of Cannabis

Despite the Title's reference to regulating cannabis, the Act is deregulatory in nature. Proposed section 11300 provides that a lawful occupant, lawful resident or guest may cultivate cannabis on private property for personal consumption. (§ 11300(a)(ii).) However, the area of cultivation may not exceed twenty-five square feet per private residence or, in the absence of any residence, the parcel. (§ 11300(a)(ii).) The Act defines "residence" as a "dwelling or structure, whether permanent or temporary, on private or public property, intended for occupation by a person . . . for residential purposes." (§ 11304(d).)

Thus, the Act and more specifically the aforementioned provisions, do not limit or regulate cannabis cultivation but instead create an absolute right to cultivate marijuana on private property, and more troubling, creates the possibility that cultivation may in some circumstances be done on public lands. Further complicating matters, the proposal is ambiguous as to whether a property owner maintains the right to prohibit cultivation on his own land. Proposed section 11300, subsection (a), provides that "[c]ultivation on leased or rented property may be subject to approval from the owner of the property." (§ 11300(a)(ii).) This provision does not state "shall be subject to approval," and therefore, is unclear as to who determines if property owner approval is required.

In light of the foregoing, Initiative Measure 09-0024 does not control or regulate cannabis. It merely permits certain behavior associated with cannabis while preventing state or local control over such behavior. For example, state or local governments may not prevent cannabis cultivation on private property. Additionally, the Act lacks clarity as to whether a property owner may even prevent a land occupier, or even a "guests," from cultivating on the owner's property.

C. The Act Does Not Permit the State of California to Tax Marijuana

The proposed Title's reference to taxing cannabis will mislead the public into believing that the Act authorizes a state marijuana tax.

Proposed section 11302, entitled "Imposition and Collection of Taxes and Fees," permits local governments to tax cannabis-related activities in order to "raise revenue . . . or [] recoup any direct or indirect costs associated with the . . . activities permitted" by the Act. (§ 11302(a).) However, proposed section 11302, subsection (b), prohibits any marijuana-specific state tax. The proposal provides that:

[a]ny licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties, or other financial responsibilities imposed on all or similarly situated businesses, facilities or premises

(§ 11302(b).) As such, the Act not only assigns the impossible task of devising a marijuana-related regulatory scheme to local governments, but the only tax benefit to the citizenry of the state will come in the form of local taxes meant to “recoup” costs associated with the newly legalized activities. This limited tax role is not apparent from the title of the Act as the Title implies, and the Act’s preamble explicitly provides, that the initiative is intended to tax and regulate cannabis to generate billions of dollars for our *state government* as well. (The Act, section 2(B)(9).)

D. The Act Will Cost the State Billions in Federal Funding While Limiting Employers’ Rights to Maintain a Safe and Drug-Free Workplace

The proposed Title of Initiative Measure 09-0024 incorrectly implies that California will benefit financially from its passage. Proposed section 11304, subsection (c), provides that:

No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.

(§ 11304(c).) Since this provision protects all “conduct permitted by [the] Act,” a California employer will no longer be able to: screen job applicants for marijuana use; regulate any employee conduct related to the use, transportation, or cultivation of marijuana, unless the employer can prove job impairment; or choose to maintain a drug-free workplace consistent with federal law. Unlike the Act’s preamble, which provides that the “Act is not intended to affect . . . controlled substances in the workplace or by specific persons whose jobs involve public safety,” the language of Section 11304(c) is devoid of any such limitation.

Furthermore, limiting an employer in this fashion will have devastating economic effects on California. The Federal Drug-Free Workplace Act of 1988 requires that all employers who receive government grants and contracts greater than \$100,000 maintain a drug-free workplace. (41 U.S.C. §§ 701-707.) Since proposed section 11304, subsection (c), would require grant recipients to violate the DFWA, it would preclude certain businesses, research institutions, and state and local governments from obtaining billions in federal funding. Additionally, proposed section 11304, subsection (c), would require employers to violate several federal mandates. For example, the U.S. Department of Transportation requires persons who operate airplanes, locomotives, trucks and buses to be removed from their respective jobs if they test positive for any narcotic.

Honorable Edmund G. Brown, Jr.

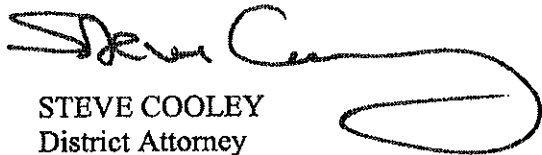
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Therefore, the implication drawn from the proposed Title of Initiative Measure 09-0024, that California will benefit financially from its passage, is wrong and highly misleading.

The Title of Initiative Measure 09-0024 states that the Act will regulate, control, and tax cannabis. Instead, the proposal legalizes certain marijuana-related activities and entrusts the design, implementation, and enforcement of such regulations to overburdened local governments. The initiative also creates the implication that the state will benefit from taxing cannabis which is misleading and wrong. The Act explicitly prohibits a state marijuana tax and would deprive California of billions of dollars in federal funding because the Act requires employers to violate the federal DFWA. For all of these reasons, the Title and Summary of 09-0024 should not be approved.

Very truly yours,



STEVE COOLEY
District Attorney

c: James Humes, Chief Deputy Attorney General
Krystal Paris, Initiative Coordinator